IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

MFA.No. 1228 of 2002()

OP(MV).192/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT/PETITIONER IN O.P (MV):

K.G.PAUL, S/O. GEORGE,
KAITHARATH HOUSE, P.O. ASHTAMICHIRA,
AMBAZHAKKAD, THRISSUR DISTRICT.

BY ADV. SRI.P.V. BABY
ADV. SRI.A.N. SANTHOSH

RESPONDENTS/RESPONDENTS IN O.P (MV):

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1. THE MANAGING DIRECTOR,
THE KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

2. BABY, S/O. VARGHESE,
KAKKASSERY HOUSE, NEAR S.N. PARK,
AYYANTHOLE.

R1 BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC &
BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.F.A. No. 1228 OF 2002

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Dated this the 23rd January, 2007

J U D G M E N T

The appellant herein was travelling as a passenger in a K.S.R.T.C. bus bearing registration No. KL.15/0174 driven by the 2nd respondent on 14.08.1994. The accident occurred at 9.30 a.m. on that day. When the driver of the bus gave side to a lorry coming from the opposite direction, the bus hit on a telephone post and in that impact, the petitioner sustained injury on his left hand. He was treated as an in-patient at the District Hospital, Thrissur from 14.08.1994 to 19.08.1994. The appellant sustained fracture on ulna left. The appellant claimed compensation of Rs. One lakh in O.P. 192 of 1995 on the file of M.A.C.T., Irinjalakkuda.

2. The respondents contended that the vehicle was driven by the second respondent with due care and caution. It was contended that the accident occurred due to negligence of the appellant as his left elbow came into contact with an electric post when side was given to the lorry. It was contended that the appellant sat in the bus in such a manner that the left elbow of the appellant was protruding outside the bus and that resulted in the injury.

3. The Tribunal, on analysing the evidence, held that the accident occurred due to the rash and negligent driving of the bus by the second respondent. As regards the claim for compensation, the Tribunal held that the appellant is entitled to get a total sum of Rs.25,000/- as compensation. In this appeal, the appellant challenges the quantum of compensation awarded.

4. The appellant is a painter by profession. He claimed in the claim petition that he earns Rs. 2,000/- per month. The Tribunal held that the average monthly income of the appellant would be Rs.800/- per month and on that basis, granted a sum of Rs. 3,200/- as compensation for loss of earning for four months. A sum of Rs. 13,056/- was allowed under the head “loss of earning power” . The Tribunal has taken Rs.800/- as the basis for arriving at this figure. Though P.W2 assessed the disability of the petitioner at 15%, the Tribunal held that the disability can be taken as 8%. No reasons are stated by the Tribunal to arrive at this conclusion. On that basis, the Tribunal held that the appellant is entitled to get Rs. 13,056/- as compensation under this head.

5. Learned counsel for the appellant submitted that there was no

basis at all for arriving at the conclusion that the appellant was earning Rs. 800/- only. He submitted that the evidence of the appellant should have been accepted in the absence of any contra evidence. He also submitted that under the second Schedule of the M.V. Act, even if the notional income for compensation to those who had no income prior to accident is taken, it would have been 15,000/- per annum, which would work out to Rs. 1,250/- per month. After considering the facts and circumstances of the case, I am of the view that the monthly income of the appellant should be taken as Rs. 1250/- (Rupees one thousand two hundred and fifty only). If so, the appellant is entitled to get a sum of Rs. 5,000/- (Rupees five thousand only) under the head, loss of earning for four months, as against the award of Rs. 3,200/- A Division Bench of this court has held in **Saritha Viswanathan v. Pazhanimala (2005 (4) KLT S.N. 14, Case No. 15)** that the Tribunal would not be justified in reducing the percentage of disability suo motu, if the medical certificate certifies permanent disability. If Rs. 1250/- is taken as the monthly earning of the appellant and if 15% is taken as disability, the appellant would be entitled to get a sum of Rs. 38,250/- (Rupees thirty eight thousand two hundred and fifty only) under

the head “loss of earning power”. I am of the view that the Tribunal should have granted a sum of Rs.38,250/- under this head. Therefore, as against the award of Rs.13,056/- under the head “ loss of earning power”, I am inclined to pass an award of Rs. 38,250/- (Rupees thirty eight thousand two hundred and fifty only).

In the result, the appeal is allowed in part . Under the head, loss of monthly income for four months, instead of Rs. 3,200/- granted by the Tribunal, Rs.5,000/- is awarded. As against the award of Rs. 13,056/- under the head “loss of earning power”, the appellant is granted a sum of Rs. 38,250/- . Thus as against the total award of Rs. 25,000/-, a total sum of Rs. 51,994/- (Rupees fifty one thousand nine hundred and ninety four only) is awarded to the appellant (i.e. an enhancement of Rs,.26,994/-). The appellant shall be entitled to interest on the enhanced compensation at the rate of 7.5% from the date of the petition till realisation.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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Dated this the 23rd January, 2007

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